U.S. Department of Labor

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Issue Date: 23 December 2005

CASE NO.: 2003-LHC-02004

OWCP NO.: 01-141968

BRB NO.: 04-0869

In the Matter of

SHIRLEY A. BEAUDOIN
Claimant

v.

ELECTRIC BOAT CORPORATION
Employer

Appearances: Carolyn P. Kelly, Esq. For Claimant; James Hornstein, Esq. For Employer/Carrier

Before: JANICE K. BULLARD
Administrative Law Judge

DECISION AND ORDER ON REMAND

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq.* (the "LHWCA" or the "Act"), and the regulations promulgated thereunder.

I. INTRODUCTION

A. Procedural History

Mrs. Beaudoin ("Claimant") filed a claim for benefits under the LHWCA and a formal hearing on the matter was held before me in New London, Connecticut on December 4, 2003. By Decision and Order dated July 14, 2004, I denied Claimant's claim for total disability benefits but awarded her permanent partial disability benefits.[1] Claimant appealed my decision and the Benefits Review Board ("BRB" or "the Board"), by Decision and Order dated August

[1] My first decision, Beaudoin v. Electric Boat Corp., 2003-LHC-02004 (7/14/2004), will hereinafter be cited as "D&O at --."

17, 2005,[2] vacated my Decision and Order and remanded the case for further proceedings consistent with its opinion and findings. The record was returned to me for reconsideration on November 1, 2005.

B. Decision and Order of July 14, 2004

In my initial Decision and Order, I found that Claimant established a *prima facie* claim of disability under the LHWCA in that Employer failed to rebut the § 20(a) statutory presumption. D&O at 21. The record reflected that sometime in June 1993, Claimant was bitten by a tick while at work and the bite developed into an abscess that required surgery. After her surgery, Claimant experienced pain in her neck and right extremity. She returned to work, and on June 7, 1996, a door fell on Claimant's right extremity, which she claimed exacerbated her previous condition. D&O at 2.

As to the nature of Claimant's disability, I found that the evidence in the record established that her shoulder injury constituted a permanent disability. D&O at 21. The parties stipulated that Claimant reached maximum medical improvement on September 7, 1996, and neither party offered any evidence that suggested that Claimant's injury was temporary in nature. Id. I found that the record supports finding that her disability was permanent as of that date. Id.

As to the extent of Claimant's disability, I found that she was only partially disabled as opposed to totally disabled. D&O at 28. I began my analysis of the extent of disability issue by finding that the evidence established that Claimant was unable to return to her former work with Employer. D&O at 22. However, I was satisfied that Claimant was only partially disabled because I found that Employer met its burden of showing the availability of suitable alternative employment that Claimant could perform. D&O at 27.

I determined Claimant's award of permanent partial disability benefits under Section 8(c)(21) of the LHWCA which authorizes compensation equal to two-thirds of the difference between the employee's pre-injury average weekly wages and her post-injury wage-earning capacity during the period of his disability. D&O at 29. I found that Claimant had a current weekly earning potential of $440 by crediting the wages reported by the employers in Employer's labor market survey for cashier and front desk clerk positions at an hourly rate of $7.50 - $11.00 per hour. D&O at 29. After adjusting for inflation, I ordered Employer to pay Claimant permanent partial disability benefits in the amount of $289.81 per week from the date of maximum medical improvement on September 7, 1996, to the present and continuing. D&O at 29.

C. The BRB's Decision and Order

On appeal to the BRB, Claimant first challenged my finding that Employer established the availability of suitable alternative employment for purposes of determining whether Claimant was totally disabled. The BRB disagreed with Claimant's contentions on that issue and affirmed my finding of suitable alternative employment and permanent partial disability. BRB at 5.

[2] The Decision and Order of the BRB, BRB No. 04-0869 (8/17/2005), will be cited as "BRB at --."

Claimant next contended, in the alternative, that I erred by commencing her award for permanent partial disability on the date of maximum medical improvement. BRB at 2. Specifically, Claimant argued that she was entitled to permanent total disability benefits until the actual date Employer demonstrated the availability of suitable alternative employment. BRB at 5. The BRB agreed with Claimant's contention that partial disability does not commence until the date Employer establishes the availability of suitable alternative employment. BRB at 5. Further, the BRB noted that I awarded Claimant the same permanent partial disability benefits based on wages found in Employer's 2003 labor market survey for earlier periods when Claimant was actually employed without determining her wage-earning capacity with regard to that employment. BRB at 6. The BRB therefore vacated my award of benefits for permanent partial disability dating from September 7, 1996, and remanded the case for me to address Claimant's entitlement to compensation for the various time periods addressed by the Board.[3] BRB at 6.

Claimant next contended that I erred by not using the actual wages she earned working as a part-time teaching assistant to calculate her post-injury wage-earning capacity in August 2003 when Employer established the availability of suitable alternative employment. BRB at 6-7. The BRB rejected Claimant's contention that her wage-earning capacity in August 2003 should be based on her teaching assistant wages and remarked that those wages are only relevant to Claimant's wage-earning capacity while she was working in that position. BRB at 7.

Claimant's final contention of appeal was that I erred by crediting the wages paid by the highest paying job identified in Employer's labor market survey to calculate her post-injury wage-earning capacity after the date Employer established the availability of suitable alternate employment. BRB at 7. The BRB agreed with Claimant that I erred in this respect because the BRB found that my finding that Claimant has a current wage-earning capacity of $440 per week was not supported by substantial evidence. BRB at 8. Specifically, the BRB rejected the method in which I determined that figure.

II. ANALYSIS

A. Issues on Remand

Based upon the Board's Decision and Order on Remand, I must decide the following issues:

(1) Was Claimant partially disabled at any time prior to the date Employer established the availability of suitable alternative evidence?

(2) If so, what was Claimant's wage-earning capacity during her periods of partial disability prior to the date Employer established the availability of suitable alternative evidence?

[3] The Board noted that Claimant was employed by Employer until April 1, 1997. Claimant did not work from April 2, 1997 to September 2000. Claimant worked as a teaching assistant from October 2000 to June 2002. Claimant has not worked since June 2002. BRB at 6.

(3) What is Claimant's wage-earning capacity after the date of which Employer established the availability of suitable alternative evidence?

B. Discussion

Once a claimant establishes a *prima facie* claim of total disability by demonstrating an inability to return to her employment because of a work-related injury, she is considered totally disabled within the meaning of the LHWCA and the burden shifts to the employer to prove the availability of suitable alternative employment ("SAE") in the claimant's community. American Stevedores, Inc. v. Salzano, 538 F.2d 933, 935-36 (2d Cir. 1976). If the employer establishes the existence of such employment, the employee's disability is treated as partial, not total. Director, OWCP v. Berktresser, 921 F.2d 306, 312 (D.C. Cir. 1991).

In my Decision and Order dated July 14, 2004, I found that Claimant had established a *prima facie* claim of total disability, which Employer had successfully rebutted with evidence of the availability of SAE. I therefore ultimately concluded that Claimant was permanently and partially disabled. The BRB affirmed these findings. BRB at 2, 5. However, the BRB held that I erred in my Decision and Order when I ordered that Employer should pay Claimant permanent partial disability benefits from the date of maximum medical improvement ("MMI") (September 7, 1996). The BRB held this way because partial disability status does not revert back to the date of MMI but rather commences on the earliest date that the employer shows suitable SAE to be available. Palombo v. Director, OWCP, 937 F.2d 70, 77, 25 BRBS 1 (CRT) (2nd Cir. 1991). The Claimant is entitled to total disability benefits until that date. Id. The BRB therefore vacated my benefits award and remanded the case for me to address Claimant's entitlement to compensation for various periods consistent with Palombo. Specifically, I must determine the correct applicability of disability benefits for the following time periods: (1) Claimant's date of MMI is September 7, 1996 but Claimant remained in Employer's employ until April 1, 1997; (2) Claimant did not work from that date to September 2000; (3) Claimant worked as a teaching assistant from October 2000 through June 2002; (4) Claimant has not worked since June 2002. BRB at 6.

As the BRB noted, Employer's labor market survey is dated August 15, 2003. EX. 1. Since this is the earliest date on record that Employer established the availability of SAE,[4] I find that permanent partial disability compensation should commence on that date. Prior to that date, Claimant is entitled to total disability benefits for periods in which she did not work or for which no SAE was identified. BRB at 6 (citing Pietrunti v. Director, OWCP, 119 F.3d 1035, 1041-42 (2d Cir. 1997); Rinaldi v. General Dynamics Corp., 25 BRBS 128 (1991)). This matter is complicated by the fact that Claimant was employed during various periods after her date of MMI but before the date that Employer established the availability of SAE. Pursuant to the Palombo analysis set out above, Claimant is to be deemed "totally" disabled until Employer establishes the availability of SAE. However, it must be acknowledged that the term "disability" is defined under the LHWCA as "incapacity because of injury to earn the wages which the employee was receiving at the time of the injury in the same or any other employment." 33 U.S.C. § 902(10). This statutory definition "demonstrates that the LHWCA is designed to

[4] I previously discredited the vocational assessment of Kent S. Moshier, dated May 25, 2000, as not well-documented. D&O at 27.

compensate for lost wage-earning capacity", Korineck v. General Dynamics Corp., 835 F.2d 42, 43 (2d Cir. 1987), because courts have viewed disability principally in economic terms. Palombo, 937 F.2d at 76. Accordingly, Claimant may not be deemed totally disabled during periods when she was actually employed. However, Claimant may be deemed "partially" disabled during any periods of time in which she was actually employed prior to the date Employer established the availability of SAE.

1. Determination of Benefits from April 2, 1997 through September 30, 2000.

The record reflects that Claimant did not work from April 2, 1997 through September 30, 2000. This entire time period is prior to the date that Employer established SAE. Accordingly, I find that Claimant was totally disabled during that time period.

Total disability benefits are computed as $66^{2/3}$ per centum of the average weekly wages of the employee during the continuance of the disability. 33 U.S.C. § 908(b). Claimant's stipulated average weekly wage was $754.71. Accordingly, I find Claimant is entitled to $66^{2/3}$ per centum of $754.71 for the period running from April 2, 1997 through September 30, 2000.

2. Determination of Benefits from October 1, 2000 through June 30, 2002.

The record reflects that Claimant worked for the North Stonington School System as a teacher's assistant from October 2000 through June 2002. Accordingly, her disability during that time period was in the nature of a partial disability because she was earning actual wages during that time, and as discussed above, "the LHWCA is designed to compensate for lost wage-earning capacity," Korineck, 835 F.2d at 43. If I were to award her total disability benefits for a time period in which she earned actual wages, not only would she be unjustly enriched for that time period, but it would also be contrary to the principle that "the LHWCA authorizes compensation not for physical injury as such, but for economic harm to the injured worker from a decreased ability to earn wages." Metropolitan Stevedore Co. v. Rambo, 117 S.Ct. 1953, 1957 (1997). The court in the Palombo case, which established that partial disability status commences on the earliest date the employer establishes SAE to be available, remarked, "[i]t is the worker's inability to earn wages and the absence of alternative work that render him totally disabled, not merely the degree of physical impairment. 'Until there is a job that the injured worker can perform, his injury is totally disabling.'" Palombo, 937 F.2d at 76 (quoting Stevens v. Director, OWCP, 909 F.2d 1256, 1257 (9th Cir. 1990), cert. denied, 498 U.S. 1073, 111 S.Ct. 798 (1991)). This passage inherently implies that Palombo is in accord with the proposition that while an injured employee is earning actual wages at an alternate place of employment, she is merely partially disabled, even though the Employer has not yet demonstrated the availability of SAE.

I reject the contention that Claimant be considered totally disabled during this period because the work was part time in nature and she performed it only with considerable pain. Cf. *Argonaut Insurance Company v. Patterson*, 846 F.2d 715, 21 BRBS 51 (CRT) (11th Cir. 1988). Claimant's performance during school year 2000-2001 was adequate enough to have garnered her an offer of full time work starting September 2001. Seasonal, part-time and intermittent work is not excluded from consideration when determining a Claimant's wage earning capacity. 33 U.S.C. §910(c).

In the case of partial disability "resulting in decrease of earning capacity," benefits are computed as "two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment." 33 U.S.C. § 908(e). Section 8(h) of the LHWCA, 33 U.S.C. § 908(h), provides that the Claimant's post-injury wage-earning capacity shall be her actual post-injury earnings if these earnings fairly and reasonably represent her post-injury wage-earning capacity. See Avondale Shipyards, Inc. v. Guidry, 967 F.2d 1039, 26 BRBS 30 (CRT) (5th Cir. 1992); Randall v. Comfort Control, Inc., 725 F.2d 791, 16 BRBS 56 (CRT) (D.C. Cir. 1884). If they do not, or if Claimant does not have any actual earnings, the administrative law judge must determine a reasonable dollar amount representing claimant's wage-earning capacity. Devillier v. National Steel & Shipbuilding Co., 10 BRBS 649 (1979). The BRB has held that "the party seeking to prove the actual post-injury wages are not representative has the burden of proof on that issue." Avondale, 967 F.2d at 1043 (quoting Burch v. Superior Oil Co., 15 BRBS (MB) 423, 427 (1983); Bolduc v. General Dynamics Corp., 9 BRBS (MB) 851, 853 (1979)).

In this case, Employer put forth no evidence that Claimant's wages as a teaching assistant were not representative of her wage-earning capacity at that time. Employer's only evidence of her wage-earning capacity was the labor market survey dated August 15, 2003. Relying upon Palombo, the BRB held in this case that a finding of SAE cannot be applied retroactively to the date of MMI. For the same reason, I decline to apply Employer's evidence of SAE retroactively to determine Claimant's post-injury wage-earning capacity during the time of her employment as a teaching assistant. To quote Palombo, "such a retroactive application assumes that the job market was the same at the time of [Claimant's employment as a teaching assistant] as it was when, according to the Employer's showing, alternative employment first became available to the Claimant. We believe this assumption to be far too speculative given even normal fluctuations in economy and the consequent movement and disappearance of many manual labor jobs." Palombo, 937 F.2d at 76. This rationale holds true in this case, especially considering that Employer's showing of SAE occurred nearly three years after Claimant began working as a teacher's assistant. Since the record contains no evidence that would indicate otherwise, I find that for the time period she worked as a teaching assistant Claimant's actual wages fairly and reasonably represented her post-injury wage-earning capacity.

My re-review of the record reflects that Claimant submitted W-2 forms demonstrating that she earned a total of $6,883.17 in 2001 and $4,726.57 in 2002 while she worked for the North Stonington Board of Education as a teacher's aid. CX. 21-1&2. Claimant testified that she worked as a teacher's assistant from October 1, 2000 through June 30, 2002. She started as a part-time aid, working an average of 19 hours a week, earning $7.30 per hour. See, Hearing Transcript at 46. She received a pay raise the next year, to approximately $7.70 per hour, and her hours increased. Hearing Transcript at 47-48; 50. Claimant also worked limited hours in June and July of 2001 as an aid at summer school. Hearing Transcript at 49. Her hours of work varied during the school year commencing September, 2001 and ending June, 2002. Hearing Transcript at 50. No evidence was submitted that accurately documents Claimant's hours of work or weekly earnings.

Although the parties were provided the opportunity to address this issue upon remand, neither has. Claimant worked sporadic work at varying hourly pay rate, and the only documentation of her work is her W-2 statements for the years 2001 and 2002. In the absence of records documenting her actual hours of work and pay during the period from October 1, 2000 through June 30, 2002, I find it appropriate to use her earnings as reflected on W-2 statements as the basis for calculating her average weekly wage as a teacher's aid. See, CX 1, 2, 21. I also fully credit Claimant's uncontradicted testimony regarding her employment during this period of time.

Claimant's stipulated average weekly wage while employed by Employer was $754.71. Pursuant to § 8(c)(21), Claimant is entitled to be paid weekly partial disability benefits calculated at 2/3 of the difference between her average weekly wage, and her earning capacity. For the period from October, 2000 until the end of that year, Claimant worked an average of 19 hours, earning $7.30 per hour. Claimant's earning capacity for this period would constitute her hourly rate of pay, adjusted for increases to the average weekly wage, multiplied by 19 hours. See, Quan v. Marine Power & Equipment Co., 30 BRBS 124 (1996).

Claimant earned $6,883.17 during 2001. I take official notice that there are 52 weeks in a calendar year. Although Claimant testified that she worked 19 hours a week during her first year as a teaching assistant, and worked fewer hours in the summer, and more when she returned as a full time aid in September, in the absence of records to document her actual hours, I find it appropriate to base her average weekly wage on a 45 week year. Claimant testified that she worked in the summer of 2001, but did not work in at least one week of June, and did not work at all in August. There is no evidence of record regarding whether Claimant was available to work in August, 2001. As Claimant returned to her job in September, and worked more hours, I decline to conclude that she was disabled during this time. However, I also find the evidence insufficient to find that she withheld herself from work during that period of time, as she expected to resume her position when school was reconvened in September. I make a similar finding regarding school holiday periods, and credit Claimant with two weeks for holidays. Accordingly, in 2001, Claimant's post-injury earning capacity would be derived from dividing her earnings of $6,883.17 by 45 weeks, and making the requisite adjustment for inflation.

In the year 2002, Claimant worked from January until June and earned $4,726.57. Claimant's earning capacity during this period would be derived by dividing that sum by 26 weeks, and making the proper adjustment for inflation from the date of injury.

In sum, Claimant is entitled to partial disability benefits during the period from October, 2000 until June, 2002, calculated at the difference between her average weekly wage of $754.71 and her earning capacity for the three separate periods described above.

3. Determination of Benefits from July 1, 2002 through August 14, 2003

Claimant is entitled to total disability benefits for periods in which she did not work (with the exception of periods during the summer of 2001, as explained above) or where no suitable alternative employment was identified. BRB at 6 (citing Pietrunti, 119 F.3d at 1041-42; Rinaldi, 25 BRBS 128). The record reflects that Claimant has not worked since her employment as a

teacher's assistant ceased in June of 2002. Employer did not establish the availability of SAE until the labor market survey of August 14, 2003. Accordingly, I find that Claimant is entitled to $66^{2/3}$ per centum of $754.71 for the period running from July 1, 2002 through August 14, 2003.

Although it may appear contradictory to have found shifting degrees of disability, it is proper in this case. I address this topic because having found that Claimant had post-injury wage-earning capacity while she was employed as a teacher's assistant, I anticipated an argument that her wage-earning capacity remained at that amount until Employer established SAE. I reject that argument for three reasons. First, as the holding in Palombo mandates, an injured employee's disability status is total until the date the employer establishes evidence of SAE. Part of the rationale for this is to create an incentive for the employer to show the availability of jobs at the earliest possible date. Palombo, 937 F.2d at 77. For whatever reason, Employer did not produce evidence of SAE until over seven years had passed after Claimant's work-related injury. Had I only awarded Claimant partial disability benefits from her post-teacher's assistant employment to the date of availability of SAE, it would function as a punishment to Claimant for searching for work on her own initiative. This is so because had she not found employment as a teacher's assistant, she would have been entitled to total disability benefits for the entire period from April 1, 1997 (the date she left Employer's employ) through August 14, 2003 (the day before SAE was established). Claimants should not be deterred under the LHWCA from seeking alternate work on their own accord.

Secondly, it remains the Employer's burden to show the availability of SAE for the Claimant after a *prima facie* claim has been established. As the BRB noted in its decision, the record is absent of evidence that the teaching position continued to be available to Claimant. BRB at 7. Further, Claimant testified that she left her job as teacher's aid even though she loved it because "it was just too tough for [her]" and Dr. Hargus had recommended that she stopped. Tr. at 51-52. Employer's vocational evidence did not establish that teacher's assistant is a position that represents suitable alternative employment for Claimant. Thus, that position cannot be considered to determine Claimant's wage-earning capacity after the work ceased. Finally, it must be reiterated that the nature of disability under the LHWCA is an economic concept as opposed to a physical concept. For that reason, it is not contradictory or illogical that Claimant's disability status could change over time more than once.

4. Determination of Benefits from August 15, 2003 through the Present and Continuing

For purposes of awarding Claimant permanent partial disability benefits after the date on which Employer established evidence of SAE, the BRB rejected my determination of Claimant's wage-earning capacity. The BRB ruled that I erred by relying only on the wage of the highest paying job identified in Employer's labor market survey. BRB at 7. Accordingly, the BRB remanded the case to me to recalculate Claimant's post-injury wage-earning capacity for the period commencing on August 15, 2003. BRB at 8.

My review of precedent demonstrates that the method utilized by the Fifth Circuit Court of Appeals for establishing wage-earning capacity after the date of SAE applies in this matter. See BRB at 7, fn. 4. The Fifth Circuit has held that an average of the range of salaries identified

as SAE is a reasonable method for determining a claimant's post-injury wage-earning capacity since a fact-finder has no way of determining which job, of the ones proven available, the employee will obtain; thus, the court stated, averaging ensures that the post-injury wage-earning capacity reflects each job that is available. See Avondale v. Pulliam, 137 F.3d 326, 32 BRBS 65 (CRT) (5th Cir. 1998); Shell Offshore, Inc. v. Director, OWCP, 122 F.3d 312, 31 BRBS 129 (CRT) (5th Cir. 1997), cert. denied, 523 U.S. 1095 (1998).

I found in my Decision and Order of July 14, 2004, that Employer had established the availability of SAE by crediting the testimony of vocational expert Ms. Sinatro. Ms. Sinatro concluded that Claimant could work as a front desk clerk and as a cashier and identified four available positions for each of those jobs. The labor market survey of August 15, 2003 disclosed the following salaries for each of the eight positions identified:

Desk Clerk Positions:

- Hilltop Inn and Suites: $8.00 - $9.00 per hour ($6.00 - $7.00 in 1996)
- Best Western: $8.00 per hour ($6.00 in 1996)
- Budget Inn: $8.00 - $8.50 per hour ($6.00 - $6.50 in 1996)
- Foxwoods Casino: $10:00 - $11.00 an hour depending upon experience
- ($8.00 in 1996)

Cashier Positions

- Wal-Mart: $8.00 per hour ($6.00 in 1996)
- Mohegan Sun Casino: $8.00 - $9.00 per hour ($6.00 - $7.00in 1996)
- Foxwoods Casino: $8.00 - $9.00 per hour ($6.00 - $7.00in 1996)
- CVS: $7.50 per hour ($5.50 in 1996)

D&O at 16-17. In my previous Decision and Order, I determined Claimant had a wage-earning capacity of $440 per week by relying solely on the position of desk clerk at Foxwoods Casino. The BRB held that this was in error because that position paid up to $11.00 per hour depending on experience and there is no evidence that Claimant has prior experience as a front desk clerk. BRB at 8.

Utilizing the method employed by the Fifth Circuit, I find that the range of salaries identified as SAE is $7.50 per hour to $10.00 per hour at the time of the assessment, and $5.50 to $8.00 in 1996. I excluded the highest amount cited ($11.00 as desk clerk at Foxwoods Casino) and selected $10.00 per hour as the cap because, as the BRB's decision notes, the Foxwoods Casino's desk clerk position pays employees depending on the amount of experience they have. Given that Claimant has no prior experience as a desk clerk, it reasonably follows that Claimant would only be offered the lowest amount of wages that that position pays. The average of the range of salaries in 2003 produced a figure of $8.75 per hour, or $350.00 for a 40 hour work week. At the time of Claimant's injury in 1996, the average hourly rate is $6.75, and her wage-earning capacity, therefore, is $270 ($6.75 x 40). Accordingly, Claimant is entitled to $66^{2/3}$ per centum of $484.71 ($754.71 - $270.00) for the period commencing on August 15, 2003 and running through the present and continuing.

ORDER

It is ORDERED that:

1. Employer shall pay Claimant Shirley A. Beaudoin disability benefits according to the following schedule:
    a. Total disability benefits in the amount of $66^{2/3}$ per centum of $754.71 per week for the period running from April 2, 1997 through September 30, 2000.
    b. Partial disability benefits in the amount of $66^{2/3}$ per centum of ($754.71 – Claimant's wage earning capacity based upon a 19 hour work week @ $7.30 per hour, adjusted for inflation) per week for the period running from October 1, 2000 through December 31, 2000.
    c. Partial disability benefits in the amount of $66^{2/3}$ per centum of ($754.71 – Claimant's wage earning capacity based upon her annual earnings of $6,883.17 ÷ 45 weeks, adjusted for inflation) per week for the period running from January 1, 2001 through December 31, 2001.
    d. Partial disability benefits in the amount of $66^{2/3}$ per centum of ($754.71 – Claimant's wage earning capacity based upon her annual earnings of $4,726.57 ÷ 26 weeks, adjusted for inflation) per week for the period running from January 1, 2002 through June 30, 2002.
    e. Total disability benefits in the amount of $66^{2/3}$ per centum of $754.71 per week for the period running from July 1, 2002 through August 14, 2003.
    f. Permanent partial disability benefits in the amount of $66^{2/3}$ per centum of $484.71 per week for the period running from August 15, 2003 through the present and continuing.

2. Employer shall receive credit for compensation already paid to Claimant.

3. Claimant's counsel may file and serve a fee and cost petition in compliance with 20 C.F.R. § 702.132. She shall first attempt to reach an agreement with opposing counsel regarding fees and costs, and set forth the extent of those discussions in her petition.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey